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April 6, 2022

Colonel John Cote
Maine State Police
42 State House Station
Augusta, ME 04333

Dear Colonel Cote:

We have completed our investigation and legal review of the incident on November 26, 2019, in Thorndike, involving the use of deadly force by Trooper Thomas Bureau II that resulted in non-fatal injuries to Eric Fitzpatrick, then age 33, at his residence in Thorndike.

Factual Summary

On the evening of November 26, 2019, Trooper Thomas Bureau II and Trooper Luke Martin were in uniform and on patrol in marked cruisers in Waldo County. Shortly after 9:00 p.m., the Augusta Regional Communications Center ("Augusta RCC") notified them of a call from a woman in Thorndike expressing concern that her neighbor, Eric Fitzpatrick, was yelling outside her house. The dispatcher further advised that Mr. Fitzpatrick was "on file as a schizophrenic."

Trooper Martin drove to the address and detected no noise coming from either house. Trooper Bureau spoke to the neighbor by telephone and learned that Mr. Fitzpatrick's ex-wife, with whom Mr. Fitzpatrick was living, worked at a restaurant in Unity. Trooper Bureau was not familiar with Mr. Fitzpatrick, but he was acquainted with the ex-wife because he was a restaurant customer. He spoke with her by telephone at about 9:15 p.m. She told Trooper Bureau that she had just talked to Mr. Fitzpatrick and, although Mr. Fitzpatrick had consumed alcohol, he did not appear to be belligerent. She explained that she would be home in 45 minutes and would be able to calm him down.

At approximately 10:00 p.m., Augusta RCC notified Trooper Bureau that Mr. Fitzpatrick called to report that his current wife from whom he was estranged was in Las Vegas and was threatening to kill herself. Dispatch further informed Trooper Bureau that Mr. Fitzpatrick was intoxicated and that he informed the dispatcher that he was intoxicated. A few minutes later,

Augusta RCC relayed information from the Waldo County Regional Communications Center (“Waldo RCC”) that Mr. Fitzpatrick had also called there and reported that he had guns and TASERS at his residence.

Trooper Bureau went to the Unity restaurant to speak with Mr. Fitzpatrick’s ex-wife before she left work. She confirmed that Mr. Fitzpatrick had a TASER but said that he had no firearms in the house. She also indicated that she believed Mr. Fitzpatrick’s statements about his estranged wife were fabricated. She said that she would be heading home in 10 to 15 minutes and she would calm Mr. Fitzpatrick down. In response to Trooper Bureau’s questions, she assured him that she felt safe going home and that this happens all the time. Trooper Bureau asked her to call him with the estranged wife’s telephone number so that he could follow up on the report of her alleged suicidal comment.

Trooper Bureau met with Trooper Martin in Unity. At 10:30 p.m., Augusta RCC informed them that a call from Mr. Fitzpatrick was transferred from Waldo RCC. Mr. Fitzpatrick said during the call that he was intoxicated and requested that officers respond to his home. He disconnected the call without explaining why he was requesting a law enforcement officer.

At 10:40 p.m., Augusta RCC notified Troopers Bureau and Martin that Mr. Fitzpatrick’s ex-wife was “on 911.” She reported that she was home and that Mr. Fitzpatrick “is freaking out on her and he is trying to tase her at this time.” Troopers Bureau and Martin headed to the residence. At 10:43 p.m., they were informed that the ex-wife was in a vehicle in the driveway and Mr. Fitzpatrick was trying to break the window of the vehicle.

The troopers, both in uniform, arrived with lights and sirens activated. They could see light and hear yelling from within the house. The ex-wife informed the troopers that Mr. Fitzpatrick was inside the house but warned there was a back door. When asked to confirm that there were no guns in the house, she told them that Mr. Fitzpatrick had “just a prong TASER that shoots a prong and a flashlight TASER.” She said that Mr. Fitzpatrick tried to tase her and she punched him to protect herself.

Troopers Bureau and Martin positioned themselves at opposite corners of the house and started calling to Mr. Fitzpatrick. Trooper Bureau had his TASER at the ready and repeatedly announced, “Eric, come outside. State Police. Come outside now.” Mr. Fitzpatrick responded by turning the lights off in the house. The troopers could see a flashing light within the house indicative of a TASER. Trooper Bureau holstered his TASER, retrieved his service weapon, and aimed through a window. He said to Trooper Martin, “I can’t see what he has in his hand. Are you sure it’s a TASER?” Trooper Martin responded that based on his observation of “the prongs,” he thought it was a TASER.

Trooper Martin was on the front lawn shining a flashlight in the direction of the house. Trooper Bureau was on the right-side corner of the house. He holstered his weapon and again drew his TASER. Trooper Bureau looked through a window and could see Mr. Fitzpatrick aiming an object in his right hand out the window. Mr. Fitzpatrick then said he was coming outside. He opened the front door and stood at the threshold, with both arms pointing in the direction of Trooper Martin. Trooper Bureau observed what he perceived to be a TASER in Mr. Fitzpatrick’s

right hand and what he believed to be a pistol in his left. Trooper Martin scrambled back toward the trees to get cover. Mr. Fitzpatrick continued to aim the TASER and pistol at Trooper Martin.

Trooper Martin yelled, "Eric, put it down." Mr. Fitzpatrick responded. "Go ahead, I've got a live [indiscernible] just like you do! Put it down motherf--ker or I will get you too. Go ahead, you f--ker. Go ahead. I'll put you down like a mother f--king sack of sh-t! Go ahead!" The ex-wife emerged from her vehicle and called out a few times, "It's a BB gun." Mr. Fitzpatrick loudly asserted, "It's not a BB gun! I've got f--king live ammo here! Go ahead. I dare you to. Go ahead. I've got mace. I've got everything! Let's see what you got, you mother f--king dick!"

Trooper Bureau drew his service weapon, came around the corner, and yelled something to draw Mr. Fitzpatrick's attention away from Trooper Martin. This caused Mr. Fitzpatrick to turn his attention to Trooper Bureau. Trooper Bureau was advancing towards Mr. Fitzpatrick when Mr. Fitzpatrick's arms extended straight out with the TASER in one hand and the pistol in the other, both aimed at Trooper Bureau. Tr. Bureau, now in close proximity to Mr. Fitzpatrick, fired two rounds from his handgun. Trooper Bureau reported he could not tell the colors of the firearms. Mr. Fitzpatrick, struck by the gunfire, stumbled into the kitchen, and fell to the floor. The troopers handcuffed him and administered first aid. When they removed his jacket, they found that he was wearing a ballistic vest without an actual ballistic shield or panel, a gun belt with a Glock pellet pistol in a holster, and a pouch containing handcuffs. "Bail Enforcement Agent" in gold lettering was on the back of the vest. On the kitchen floor next to Mr. Fitzpatrick was a TASER and what appeared to be a handgun with a black grip and orange barrel. This handgun was actually a pepper spray gun.

A search warrant later executed at the residence resulted in the recovery of a black nylon gun belt, the black Glock pellet pistol, the TASER with a cartridge, the pepper spray gun, and a ballistic vest carrier, all from the kitchen. The gun belt contained a holster, a handcuff case with handcuffs, a mace pouch with mace, a radio pouch, and a handcuff key.

Mr. Fitzpatrick sustained a gunshot wound to his abdomen that caused significant damage to his liver, but he survived his injury. He was later indicted for criminal threatening with a dangerous weapon and terrorizing with a dangerous weapon. In a plea agreement on June 15, 2021, he was convicted of the criminal threatening charge and sentenced to three years' incarceration, all of which was suspended in favor of two years' probation during which time he is required to submit to psychological counseling and treatment and abide by other conditions, including no contact with his ex-wife. On the same day, Mr. Fitzpatrick was convicted of domestic violence terrorizing that occurred in April 2021 and sentenced to three years' incarceration, all of which was suspended in favor of two years' probation and to be served concurrently with the criminal threatening sentence.

Discussion and Legal Analysis

The Office of the Attorney General has exclusive responsibility for the direction and control of any criminal investigation of a law enforcement officer, who, while acting in the performance of the officer's duties, uses deadly force.¹ The detectives who conduct these

¹ 5 M.R.S. § 200-A


investigations are independent of any other law enforcement agency. The sole purpose of the criminal investigation is to establish whether self-defense, including the defense of others, was reasonably generated by the facts to determine whether a criminal prosecution is warranted. Any criminal prosecution would require the State to disprove self-defense or the defense of others beyond a reasonable doubt. Under Maine law, for any person, including a law enforcement officer, to lawfully use deadly force in self-defense or the defense of others, two requirements must be met. First, the officer must reasonably believe that deadly force is imminently threatened against the officer or a third person and, second, the officer must reasonably believe that the use of deadly force is necessary to defend the officer or a third person.

Whether the use of force by a law enforcement officer is reasonable is based on the totality of the particular circumstances and judged from the perspective of a reasonable officer on the scene, allowing for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a given situation. The legal analysis requires careful attention to the facts and circumstances of each case, including the severity of the crime threatened or committed and whether the suspect poses an immediate threat to the safety of others. The investigation did not include an analysis of whether any personnel action might be warranted, of whether the use of deadly force could have been averted, or of whether there might be civil liability. Indeed, state law provides justifiable conduct under the Criminal Code does not abolish or impair any other remedy available under law.

Conclusion

When Trooper Bureau shot Mr. Fitzpatrick, he reasonably believed that Mr. Fitzpatrick was about to use unlawful deadly force against him when he aimed a TASER and what appeared to be handgun at him. Trooper Bureau's perception that it was in fact a firearm was reasonable given the particular circumstances of limited lighting and the specific actions of Mr. Fitzpatrick in clearly asserting that he had a handgun, had the officer in his sights, and intended to shoot the troopers.² Trooper Bureau knew that Mr. Fitzpatrick had attempted to assault his ex-wife with a TASER and then tried to break into her vehicle when she attempted to get away. The troopers had identified themselves as State Police and had directed Mr. Fitzpatrick repeatedly to drop his weapons. Instead, he challenged them verbally and by aiming his weapons first at Trooper Martin and then at Trooper Bureau. All the facts and circumstances point to the conclusion that Trooper Bureau acted in defense of self and others when he shot Mr. Fitzpatrick.

Sincerely,


AARON M. FREY
Attorney General

² Under 17-A M.R.S. § 2(9)(D), "proof that a thing is presented in a covered or open manner as a dangerous weapon gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303, that it, in fact is a dangerous weapon."